



**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Issued by the Department of Transportation  
on the 25th day of January, 1996

**Served            January 25, 1996**

**AMERICA WEST AIRLINES, INC.**

Violations of 14 CFR 399.84 and  
49 U.S.C. §41712

**CONSENT ORDER**

This consent order concerns violations of the price advertising requirements of 14 CFR 399.84 and 49 U.S.C. § 41712 by America West Airlines, Inc. (America West). This order directs America West to cease and desist from future violations and to pay compromise civil penalties.

As a U.S. certificated air carrier, America West is subject to the Department's policy on price advertising embodied in 14 CFR 399.84. When advertisements do not conform to the requirements of section 399.84, they also violate 49 U.S.C. § 41712, the statutory provision which prohibits unfair or deceptive practices and unfair methods of competition. Section 399.84 requires that any advertising or solicitation which states a price for air transportation must state the entire price to be paid. The Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) has, as a matter of enforcement policy, permitted carriers to advertise each-way fares that are available only when purchased for round-trip travel so long as the fare is available in a reasonable quantity and the round-trip condition is prominently and proximately disclosed with the fare. The Enforcement Office also permits carriers to list certain government-imposed or -approved per-passenger charges separate from the advertised price so long as the advertisement identifies the nature and amount of the charges to enable the consumer to ascertain the total cost for the advertised air transportation.

On January 31, 1995, America West published an each-way fare advertisement which appeared in *USA Today*. The advertisement improperly listed several combinations of departure and destination cities for which tickets could be purchased for a specific each-

way fare on available "night flights." This advertisement was deceptive in violation of section 399.84 and 49 U.S.C. § 41712 because the advertised fare was not available for round-trip itineraries for each of the listed city-pair combinations. Similarly, on January 31, 1995, America West published an each-way based on round-trip purchase fare advertisement which appeared in the *Boston Globe (Globe)*. The advertisement was deceptive because it listed flights from Boston to 16 cities, including Reno, San Francisco, and Tucson, when round-trip travel was not possible at the advertised each-way fare to these three cities.

On January 31, 1995, America West also published an each-way based on round-trip purchase fare advertisement which appeared in the Minneapolis *Star Tribune*. The advertisement improperly listed additional costs for "Airport Service Charges." Under the Enforcement Office's long-standing enforcement policy, only government-imposed or -approved per-passenger charges may be stated separately from the advertised price, and only then if the nature and amount of the charge is made clear. Although America West has stated that no additional amounts were collected for "Airport Service Charges" from passengers, the listing of such a fee tends to mislead consumers regarding the basis of the total price to be paid and could thereby violate 49 U.S.C. § 41712.

On August 17, 1995, America West also published an advertisement which appeared in *USA Today* listing fares to Mexico and Canada. The fine print listed additional charges for departure or goods and services taxes to these destinations; however, the advertisement did not define what a goods and services tax was nor did it list an amount for the taxes. As noted above, per-passenger government-imposed or -approved charges can only be stated separately if the amount of the charge is made clear. Consequently, the failure to include the amount of the taxes violated section 399.84.

In mitigation, America West states that, at all times, it has conducted its advertising activities in good faith with no intent to deceive and that it promptly corrected the problems when they were brought to the company's attention. Regarding the "night flights" advertisements, America West asserts that it honored the advertised one-way fares on available night flights for any passenger purchasing a round-trip ticket and notes that its internal records indicate that not a single consumer complained about the availability of flights advertised. The disclosure with respect to "Airport Service Charges," according to the carrier, was a good faith effort to highlight for consumers the obligation to pay passenger facility charges and no additional charges were imposed on any passenger. America West further states that the disclosure in the August 1995 *USA Today* advertisement regarding departure or goods and services taxes was an isolated error that was quickly corrected.

America West also states that prior to being notified of the Department's concerns, it developed and distributed written internal advertising guidelines augmented by internal training. Finally, America West states that it has cooperated fully with the Department's investigation.

The Enforcement Office has considered the information provided by America West but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and America West have reached a settlement of this matter. America West consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41712 and section 399.84 of the Department's regulations and to the assessment of \$35,000 in compromise of potential civil penalties as described below. The Enforcement Office believes that the assessment of a civil penalty of \$35,000 is warranted in light of the nature and circumstances of the violations at issue here. Of the assessed civil penalty, \$17,500 shall be paid under the terms described below. The remaining \$17,500 will be forgiven if America West remits payment in a timely fashion and refrains from further violations of the price advertising requirements of 14 CFR 399.84 for one year from the service date of this order. This order and the penalty it assesses will provide an adequate deterrence to future noncompliance by America West, as well as by other domestic and foreign air carriers and other advertisers of air transportation.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.22.

**ACCORDINGLY,**

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that America West violated 14 CFR 399.84 by advertising fares that were not available;
3. We find that America West violated 14 CFR 399.84 by failing to state the total price to be paid in fare advertisements for air transportation;
4. We find that by engaging in the conduct and violations described in paragraphs 2 and 3 above, America West also violated 49 U.S.C. § 41712;
5. America West, and all other entities owned or controlled by or under common ownership with America West, and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. § 41712 and 14 CFR 399.84;
6. America West is assessed \$35,000 in compromise of potential civil penalties that might otherwise be assessed for the violations found in paragraphs 2 through 4 of this order. Of this amount, \$17,500 shall be paid within 15 days of the date of service of this order by wire transfer as specified below. The remaining \$17,500 shall be suspended for one year following the service date of this order and shall be forgiven unless America West fails to comply with the payment provisions of this order or violates the requirements of section 399.84 or this order during the year following

service of this order, in which case the entire unpaid portion of the \$35,000 assessed penalty shall become due and payable immediately; and

7. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered will subject America West to assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

**BY:**

**ROSALIND A. KNAPP**  
**Deputy General Counsel**

**(SEAL)**